

## DEVELOPMENT AREEMENT

This Development Agreement (herein the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between America First Federal Credit Union (the "Credit Union"), Utah Transit Authority ("UTA"), and West Valley City ("City"), a municipal corporation and political subdivision of the State of Utah.

### Recitals

A. WHEREAS, UTA desires to construct a new bus and transportation hub on its property at or about 2790 West 3650 South, West Valley City, Utah. Said bus and transportation hub will utilize the entire Eastern portion of the former Market Street, including the portion of the former Market Street that is owned or will be owned by the Credit Union, (the "Credit Union Property"), as depicted on the site plan attached hereto as Exhibit "A."

B. WHEREAS, the vacation of Market Street and the construction and operation of UTA's bus and transportation hub will alter and restrict access to the Credit Union's property located at 2788 West 3650 South, West Valley, Utah.

C. WHEREAS, the City must approve the site plan attached hereto as Exhibit "A."

NOW, THEREFORE, the parties agree, in consideration for the promises exchanged herein, as follows:

1. Construction of New Drive Approaches: UTA has retained a licensed contractor(s) (the "**UTA Contractors**") to construct the planned improvements to the Credit Union Property. UTA shall cause the UTA Contractor to install the new drive ways, parking lot, landscape, drive approach onto 3650 South, fence as set forth on the attached drawing, and the "Construction", along with all the required utility lines if needed to be relocated including but not limited to water, sanitary sewer, storm sewer, gas, power, fiber optics, phone, and any other type of utility currently used or that will be required to be used by the Credit Union once the construction is completed. The Credit Union shall approve the location of and type of utilities installed by UTA Contractors UTA shall cause the UTA Contractors to install such improvements according to the alignments and engineering drawings approved by the parties and the City. UTA Contractors SHALL coordinate access, staging and site availability with the Credit Union to ensure that the work does not interfere with the day to day operation of the Credit Unions business. The Credit shall grant the UTA Contractors reasonable construction access as necessary to complete the contemplated work. The costs for the work identified above shall be allocated as follows:

A. UTA shall be responsible for all costs of installing the improvements of said construction.

- B. UTA shall be responsible to reimburse the Credit Union for all new signage required by AFCU at AFCU's discretion to redirect members during and after construction is complete. Said amount shall not exceed \$1,000. Such payments shall be reimbursed by UTA within 30 days of receipt of invoice.
2. Insurance, Bonds, Warranties: UTA shall cause the UTA Contractors to maintain general liability insurance with limits of not less than \$1 Million per occurrence, \$2 Million aggregate. UTA shall cause the UTA Contractors to maintain payment and performance bonds in the full amount of UTA's construction contract.
3. Credit Union Release Interest in Market Street: The Credit Union releases its interest in the property it received by closure of Market Street to West Valley City. One half of Market Street is contiguous to the Credit Union's property. The Credit Union shall deed this property by quit claim deed to West Valley City upon the City's request.
4. Prohibition Liens and Encumbrances: UTA shall fully pay for all labor expended for, and all materials joined or affixed to, any property of the other in connection with construction performed under this Agreement. UTA shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property in connection with construction performed under this Agreement.
5. Warranty: UTA shall warrant the work performed by the UTA Contractors for a period of one (1) year after completion.
6. Approval by City: The City approves the revised site plan attached hereto as Exhibit "A." This approval shall be granted to the Credit Union as long as the Credit Union remains at this location.
7. Indemnification: The Credit Union, West Valley City, and UTA, and their successors in interest and/or assigns (including future purchasers of any portion of the Credit Union property) agree to defend and hold each other harmless for any and all claims, made by any person who is a guest, licensee, agent, employee, invitee, business invitee of one of the other parties on the areas over which they have granted the access for the construction of the areas contemplated in this Agreement.
8. Entire Agreement: All oral negotiations are merged into this Agreement and it becomes the final agreement between the parties. This Agreement may only be amended in writing.
9. Attorney Fees: If any action at law or in equity, or any special proceeding (including bankruptcy proceedings and appeals from lower court rulings), be instituted by any party against another party to enforce this Agreement or any rights arising hereunder, or in connection with the subject matter hereof, the prevailing party shall be entitled to recover all costs of suit and

reasonable attorneys' fees. For purposes of this paragraph, the term "prevailing party" shall, in the case of a claimant, be the party who is successful in obtaining substantially all of the relief sought, and in the case of the defendant or respondent, the party who is successful in defending substantially all of the relief sought by the claimant. The venue for any such action or proceeding shall be Weber County, Utah.

10. Notice: Any notice to be given to another party in respect to this Agreement shall be in writing and shall be deemed effective: (a) upon personal delivery to the party for whom such notice is intended at the address set forth below (or upon the refusal of any such attempted personal delivery), or (b) one day after deposit with a nationally recognized air courier service for overnight delivery, addressed as set forth below, with delivery charges prepaid, or (c) three days after deposit in the United States mail, certified, return receipt requested, postage prepaid (or as of any earlier date evidenced by a receipt from the United States Postal Service). Notices shall be addressed as follows:

West Valley City:	West Valley City Nicole Cottle 3600 Constitution Blvd. West Valley City, Utah 84119
-------------------	--

UTA:	Hal Johnson Utah Transit Authority 669 West 200 South Salt Lake City, UT 84101
------	---

With a copy to:	Office of General Counsel Utah Transit Authority 3600 South 700 West P.O. Box 30810 Salt Lake City, UT 84130-0810
-----------------	---

AFCU:	America First Federal Credit Union Glenda Burnside P.O. Box 9199 Ogden, UT 84409
-------	---

With a copy to:	VanCott, Bagley, Cornwall & McCarthy Attention Timothy W. Blackburn/Richard H. Reeve 372 24 <sup>th</sup> Street Suite 400 Ogden, UT 84401
-----------------	---

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**Utah Transit Authority**

By: \_\_\_\_\_

Name (Print) \_\_\_\_\_

Its: Authorized Agent

STATE OF UTAH                    )  
   : ss  
COUNTY OF SALT LAKE    )

On this \_\_\_\_ day of \_\_\_\_\_, 2009, before me, a Notary Public in and for such state, personally appeared \_\_\_\_\_, to me personally known (or proved or acknowledged to me on the basis of satisfactory evidence), who acknowledged that he is the \_\_\_\_\_ of Utah Transit Authority, and that said instrument was signed on behalf of said entity and that this instrument is binding on said entity.

\_\_\_\_\_  
Notary Public

**Credit Union:** AMERICA FIRST  
FEDERAL CREDIT UNION

By: \_\_\_\_\_

Name (Print) Jil Morby

Its: Sr. Vice President/Operations

STATE OF UTAH                    )  
  : ss  
COUNTY OF WEBER            )

On this \_\_\_\_ day of \_\_\_\_\_, 2009, personally appeared before me \_\_\_\_\_, personally known to be the Authorized Agent of the America First Federal Credit Union, a Utah corporation sole, who acknowledged that she is the Authorized Agent of said corporation, and that said instrument was signed on behalf of said entity and that this instrument is binding on said entity.

\_\_\_\_\_  
Notary Public for Utah

**West Valley City**

By: \_\_\_\_\_

Name (Print) Dennis J. Nordfelt

Its: Mayor

ATTEST:

\_\_\_\_\_  
Sheri McKendrick, City Recorder